

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

RODNEY BOATRIGHT,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)

No. 33A05-0707-CR-374

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Bob A. Witham, Judge
Cause No. 33D02-0704-FD-89

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Rodney Boatright appeals the trial court's denial of his request for counsel prior to his sentencing hearing. We reverse and remand.

Issue

Boatright raises one issue, which we restate as whether the trial court abused its discretion when it denied Boatright's request for counsel prior to his sentencing hearing.

Facts

On April 5, 2007, the State charged Boatright with five Class D felony counts of receiving stolen property and with being an habitual offender. That day, Boatright appeared at the initial hearing without counsel. Boatright waived his rights and pled guilty at that hearing.

On April 30, 2007, Boatright appeared for sentencing. The trial court asked Boatright if he would like to make any comments before sentencing, and Boatright replied, "A lawyer." Tr. p. 15. The trial court told Boatright he waived that right. Boatright replied that he was still "under the influence" at the initial hearing. *Id.* The trial court denied Boatright's request and proceeded to sentence him. This appeal followed.

Analysis

Boatright argues, and the State concedes, that he was entitled to counsel at the sentencing hearing. A criminal defendant has the right to counsel at all critical stages of the proceedings, including the sentencing hearing. Stamper v. State, 809 N.E.2d 352, 353 (Ind. Ct. App. 2004). Boatright initially waived his right to counsel and pled guilty.

However, “it would be illogical to bar all opportunity for reasserting one’s right to counsel once a defendant realizes his mistake in proceeding pro se.” Koehler v. State, 499 N.E.2d 196, 199 (Ind. 1986). Trial courts have discretion to determine whether a defendant may abandon pro se representation and reassert the right to counsel. Id. at 198-99.

In exercising that discretion, the trial court should consider the following five factors from the Koehler case: 1) the defendant’s prior history in the substitution of counsel and the desire to change from self-representation; 2) the reasons in the defendant’s request; 3) the length and stage of trial proceedings; 4) any disruption or delay in trial proceedings if the request is granted; and 5) the likelihood of the defendant’s effectiveness in defending the charges on his own. Stamper, 809 N.E.2d at 354.

Boatright did not have a history of firing attorneys during this action; rather, it appears he merely changed his mind and wanted assistance for the sentencing. Boatright seems to contend he was not in the proper state of mind when he waived his rights, but does not dispute his guilty plea. No disruption or delay would have occurred here, as the request did not come in the midst of trial but at a natural break in the proceeding. Boatright did not present any argument during the sentencing and was likely not effective at representing himself.

We hold that Boatright was entitled to counsel at his sentencing hearing. It was an abuse of discretion for the trial court to deny his request for counsel. We also note that the trial court’s failure to consider the five Koehler factors was reversible error. Id. at

355. The parties agree that Boatright is indigent, and Boatright brings no claims on the validity of his guilty plea. We therefore reverse and remand with instructions for the trial court to appoint an attorney for Boatright and conduct a new sentencing hearing.

Conclusion

The trial court abused its discretion when it denied Boatright's request for counsel. We reverse and remand this case for further proceedings consistent with this opinion.

Reversed and remanded.

KIRSCH, J., and ROBB, J., concur.